THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 8658, 8685, 8819, 8955, 9004, 9054, 9196, 9197, AND 9264 OF 2007

DATED: 1st May, 2007

W.P.No. 8658 of 2007

Between:
L.Kiran Kumar and others.

…Petitioners

And

Dr.N.T.R. University of Health Sciences,
Vijayawada, Krishna District,
represented by its Registrar and others.

…Respondents.

COMMON ORDER:

Though these cases are listed for admission, but, in view of the urgency expressed by the learned counsel for the petitioners and as counter affidavit has been filed, at their request, they are heard finally at the stage of admission and are disposed of by this common order.

In all these writ petitions, the petitioners are the students of M.B.B.S. course studying in various private medical colleges affiliated to N.T.R. University of Health Science. They were admitted into the said course during the academic year 2006-07 and appeared for the first year examinations, which were conducted from 5th September, 2006 to 10th October, 2006. The results were published in the newspapers and simultaneously were communicated to the students through respective Principals of various colleges in the State. While announcing the results, it was notified to the students that applications for personal identification and retotalling can be submitted on or before 13.12.2006 and out of 4076 candidates appeared for the first year examinations, 992 students were declared as failed. The first year

M.B.B.S. course comprises of six papers in three subjects, namely, (1) Anatomy, (2) Physiology and (3) Biochemistry i.e. two papers in each subject. Out of the 992 failed candidates, 436 students had applied for recounting and the said process was taken up from 29.1.2007. At that point of time, various representations were made to the University stating that the valuation of answer scripts was not done fairly and some of the answers were not valued and considered at all while awarding marks. It was stated in the said representation that for some of the answers, without any valuation, '0' marks were awarded, which results in demoralizing the students who had bright career in their studies. While alleging that some of the questions were outside the syllabus notified, they pleaded that for the mistake on the part of the valuers/examiners, the students should not suffer and requested for reverification of the answer scripts for award of proper marks to the answers of various students. Similar such representations were also made to the Honourable Chancellor of the University and the Honourable Minister for Health, Medical and Family Welfare. Even the said representations were forwarded to the University and on the basis of the said representations, the Vice-Chancellor of the University had constituted a Committee consisting of three Professors to re-examine and verify the answer scripts in the subjects of Anatomy, Physiology and Biochemistry. The Committee consisted of Professor Honeyman, Head of the Department of Anatomy, Kurnool Medical College, Dr.Malleswari, Professor and Head of the Department of Physiology, Guntur Medical College, Guntur and Dr.K.L.Prabhakar Reddy, Professor and Head of the Department of Biochemistry, Sidhartha Medical College, Vijayawada. But, however, as subsequently, Dr.Malleswari was not available, in her place, Dr. G.S.R.Sharma, M.D., Professor and Head of Department of Physiology, Guntur Medical College, was appointed as a member of the above Committee in the place of Dr.Malleswari. The said Committee undertook the reverification of answer scripts of 436 students and revalued the

answer scripts and awarded marks. The results of the reverification process was declared on 2.2.2007 and communicated to the Principals of the respective medical colleges. Out of 436 candidates applied for recounting, 294 candidates were declared passed. Meanwhile, the University received a letter from the Honourable Minister alleging certain irregularities in the reverification process. A complaint was also received through e.mail, which is addressed to the Vice-Chancellor alleging certain irregularities in the examination section during the process of reverification of the answer scripts. In view of the said representation, it was decided to place the matter before the Executive Council. The Executive Council in its meeting held on 10-2-2007 resolved to ask the Government of Andhra Pradesh to constitute High Level Committee to verify the matter in all aspects, namely, to find out the circumstances under which reverification of answer scripts was taken, to find out whether any irregularities happened while carrying out the above work and to withhold the revised results of 1st MBBS course till enquiry report is submitted and inform same to the Principals of Medical Colleges immediately.

Pursuant to the said decision of the Executive Council of the University, the University had addressed a letter dated 10.2.2007 to the Government requesting for constitution of an Enquiry Committee. But, however, it appears, no enquiry committee was constituted by the Government. At the same time, a fax message dated 12.2.2007 was communicated to all the Principals to keep the results of the reverification process in abeyance. Pursuant to the communication of fax message keeping the results of the reverification process in abeyance, when the students were not allowed to continue in the second year M.B.B.S. course, a batch of writ petitions was filed before this Court. As much as the said communication was as an interim measure and by that time, they were attending the classes, this Court while issuing notice before admission in a batch of cases, permitted the students to continue to attend the classes. During the pendency of

the above writ petitions, the matter was reconsidered by the Executive Council of the University in its meeting held on 2.4.2007 and in the said 169th meeting of the Executive Council, a decision was taken, by unanimous resolution, cancelling the whole process of revaluation and permitted the students who failed in September/October, 2006 examinations to reappear in the examinations scheduled to be held from 25.4.2007. But, however, it is stated that the said examinations were postponed to 15-5-2007. A copy of the resolution of the Executive Council is placed before this Court, which is to the following effect:

> " However, the Executive Council agrees with the opinion of learned Advocate-General, High Court of A.P., Hyderabad that the revaluation is not legal and liable to be cancelled and it results in dilution of the standards of education. The university also does not have the provision of revaluation of answer scripts.
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> It is therefore unanimously resolved that the whole process of revaluation should be cancelled and the students who failed in Sept/Oct, 2006 examination to reappear in the university exam that is scheduled from 25th April, 2007."

The said resolution was sent to the Honourable Chancellor for his consideration and approval and based on the approval of the decision of the Executive Council, the N.T.R. University of Health Sciences, Vijayawada vide their impugned proceedings in Ref.No.8284/E1(A) Exams/2007, dated 20.4.2007, sent a communication to all the Principals of medical colleges about the cancellation of the results of the reverification process and students were asked to be communicated, by displaying a copy of the letter on the notice board of the college.

These writ petitions are filed questioning the decision of cancellation of results of the reverification process and the communication sent to the Principals of the medical colleges, mainly, on the grounds that the resolution cancelling the whole process of reverification is without any valid reason and the said decision is taken in violation of the Principles of Natural Justice, as none of the students

whose performance is cancelled was given any opportunity before taking such a decision. It is further stated that as the valuation was not done fairly and several answers were not valued in the first valuation and in view of the various representations made to the University, the Vice-Chancellor has rightly exercised the power under Section 12(2) of the N.T.R. University of Health Sciences Act, 1986 (for short "the Act") and based on the said decision, reverification process was already completed and results were announced, and, in view of the declaration of results based on the reverification process, they were permitted to the second year M.B.B.S. course and as such, it is not open to the respondents to cancel the performance based on the reverification process, at this point of time. It is further stated that in any event, the Executive Council has no jurisdiction to cancel the reverification process which was done in pursuance of the decision taken by the Vice-Chancellor in exercise of his powers under sub-section (2) of Section 12 of the N.T.R. University of Health Sciences Act, 1986.

Heard Shri E. Manohar, Shri K.Ramakrishna Reddy, learned Senior Counsel, Shri Vedula Venkataramana, Shri M.Ratna Reddy, Shri O.Manohar Reddy, Shri K.V.Bhanu Prasad, Shri M.Subba Reddy, Shri V.R.Reddy Kovvuri and Balaji Medamalli, learned counsel, on behalf of the petitioners and Shri C.V.Mohan Reddy, learned Advocate-General for the respondents.

It is submitted by Shri E.Manohar, learned Senior Counsel appearing for the petitioners that the provisions of the N.T.R. University of Health Sciences Act, 1986 demarcate the powers of the Executive Council and Academic Council for each purpose, and, as much as the matter relates to conduct of the examinations of an academic course, if at all any authority has to go into the same, it is the Academic Council but not the Executive Council. It is further submitted by the learned counsel for the petitioners that, in any event, the decision was not based on any valid reasoning for cancelling the performance. The

resolution for cancellation of the reverification process was passed only on the ground that it dilutes the standards of the course and the same is not at all a ground to cancel the reverification process. It is submitted that as the Vice-Chancellor is the Chief Executive and Academic Officer of the University having overall general supervision and control over the affairs of the University under sub-section (2) of Section 12 of the Act, it is always open for the Vice-Chancellor in the interests of students to order for reverification/revaluation even in the absence of any provision for revaluation. Further, it is submitted that there is no such prohibition in the academic regulations and in view of the general supervisory power as a Principal Executive and Academic Officer of the University, he has rightly ordered for reverification and as such, merely referring to a ground that it dilutes the standards, the Executive Council ought not to have taken any decision to cancel the performance when the students are prosecuting their second year course. In support of his arguments, learned Senior Counsel relied on the judgments of the Apex Court in **State of Orissa v. Prajnaparamita Samanta**[1], **President, Board of Secondary Education v. D.Suvankar**[2], and a judgment of this Court in the case of **M.Kiran Babu v. Govt. of A.P.**[3].

On the other hand, it is submitted by the learned Advocate-General appearing for the respondents that the University is a creature of a statute, namely, the N.T.R. University of Health Sciences Act, 1986 and is governed by various statutes framed under the said Act, and, as much as there is no provision to seek revaluation or reverification of the answer scripts of examinations of MBBS, the very initial process undertaken for reverification based on the representations of the parents association is per se illegal. It is submitted that as much as the Executive Council is the competent authority to take a decision in the matter and in view of the reference made by the Vice-Chancellor to the Executive Council, the Executive

Council, in exercise of powers under sub-section (3) of Section 12 of the N.T.R. University of Health Sciences Act, passed a resolution cancelling the performance of the reverification process. It is stated that in view of the proviso to Section 12(3) of the Act, the matter was referred to the Chancellor and the decision of the Chancellor is final. It is submitted that in view of the power conferred on the Executive Council, the Executive Council had taken a decision, which is approved by the Chancellor of the University, whose decision is final. Therefore, there is no illegality or irregularity, which warrants interference by this court under Article 226 of the Constitution of India. It is further submitted that even assuming that the Academic Council is the competent authority, but, any interference with the decision taken by the Executive Council as approved by the Chancellor will result in revival of the decision taken by the Vice-Chancellor, which itself is per se illegal, and, as such, the petitioners are not entitled for any relief in this petition filed under Article 226 of the Constitution of India. It is also submitted that as per Section 30 of the N.T.R. University of Health Sciences Act, 1986 various statutes of the University were made and as per statute 5 (xvi) of the Second Schedule, the Executive Council is the competent authority to regulate and determine all matters concerning the University in accordance with the Act and the statutes, and as such, the decision taken by the Executive Council is within its powers. The learned Advocate-General, in support of his arguments, relied on the judgment of the Apex Court in **Gadde Venkateswara Rao v. Govt. of A.P.**[4] and also a decision of a Division Bench judgment of this Court dated 22.9.2006 in **N.T.R. University of Health Sciences, Vijayawada v. T.Deepthi and others** (Writ Appeal No. 960 of 2006).

The N.T.R. University of Health Sciences Act, 1986 was enacted for the purpose of ensuring efficient and systematic education, training and research on the Allopathic and Indian systems of medicine etc. Chapter III of the Act deals with various officers of the University and

under Section 12 of the Act, the Vice-Chancellor of the University is to be appointed by the Chancellor out of a panel of names. As per sub-section (2) of Section 12 of the Act, the Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University. Under sub-section (3) of Section 12, the Vice-Chancellor is permitted to exercise any power conferred on any authority of the University or under this Act, if he is of opinion that immediate action is necessary and report to such authority the action taken by him. Under proviso to sub-section (3) of Section 12, if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Chancellor, whose decision thereon shall be final. Under Section 30 of the Act, the Executive Council shall have power to make statutes, which are notified in the second schedule, in respect of the matters specified therein.

Though it is the case of the petitioners that the issue involved herein, in respect of which a decision was taken by the Executive Council in its meeting held on 2.4.2007 with reference to cancellation of the results of the reverification, is within the purview of the Academic Council, but, however, there is a general power to the Executive Council to regulate and determine all matters concerning the University in accordance with the Act and the statutes. But, at the same time, it is contended by the learned Advocate-General that in absence of any provision for evaluation, as the authority under Section 12(2) of the Act has ordered for reverification, it is open for the Executive Council to cancel the reverification process. With reference to the same, it is to be noticed that in absence of any express power conferred either on the Executive Council or the Academic Council, the decision taken by the Vice-Chancellor in exercise of his powers under sub-section (2) of Section 12 of the Act cannot be annulled in exercise of powers under sub-section (3) of Section 12 of the Act.

In the cases on hand, representations were made by the parents association and copies of the same were also forwarded to the Chancellor and the Government. The said representations addressed to the Chancellor and the Government were also in turn forwarded to the Vice-Chancellor. On the said representations, a decision was taken by constituting a Committee to reverify the answer scripts of the students, as it was represented that the best meritorious students were also declared failed in one or the other subject among the three subjects. Pursuant that, verification process was undertaken and petitioners were declared passed and they were permitted to the second year of the course and were attending classes of second year from 3-2-2007.

In this connection it is to be seen that the Vice Chancellor is the Principal Executive and Academic Officer of the University and shall exercise general supervision and control over the affairs of the University. Moreover, there are no specific academic regulations framed in respect of reverification/revaluation and there is no provision for revaluation of the answer scripts. Therefore, in absence of conferment of any express power either on the Executive Council or the Academic Senate, the exercise of power either by the Executive Council under sub-section (3) of Section 12 of the Act or by the Academic Senate does not arise. In view of the same, the Vice-Chancellor, in exercise of his power under sub-section(2) of Section 12 of the Act, ordered for the reverification of the answer scripts of the examinations of first year M.B.B.S. pursuant to the representations that valuation of answer scripts was not done properly and some of the answers were not at all valued and some were given '0' marks without any valuation and the career of bright students was in peril. In that view of the matter, the said exercise of the power by the Vice-Chancellor, pursuant to which reverification was done and the successful candidates were permitted to attend the classes of second year cannot be said to be illegal. In this regard, I am fortified by a decision of the

Honourable Apex Court in **Marathwada University v. S.B.R.Chavan**[5] wherein it is held thus:

> " The Vice-Chancellor in every university is the conscious keeper of the University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. The express powers include among others, the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed by all concerned. (Section 11(3)). The Vice-Chancellor has a right to regulate the work and conduct of officers and teaching and other employees of the University (Section 11(6)(a). He has also emergency powers to deal with any untoward situation. (Section 11(4)). The power cosnferred under S.11 (4) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must, however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him the implied power. It is the magisterial power which is plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil, he has to act firmly and promptly to put down indiscipline and malpractice. It may not be illegitimate if he could call to aid his implied powers and also emergency powers to deal with all such situations."

In the judgment relied on by the learned counsel for the petitioners in the case of **State of Orissa v. Prajnaparamita Samanta (1 supra),** the Honourable Supreme Court upheld the revaluation of answer books based on the report of the expert body, which was constituted. Further in the case of **President, Board of Secondary Education v. D.Suvankar (2 supra),** the Honourable Supreme Court has held thus:

> " Award of marks by the examiner is to be fair, and considering the fact that revaluation is not permissible under the Statute, the Examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping stone on career advancement of a student. Absence of a provision

> for revaluation cannot be a shield for the Examiner to arbitrarily evaluate the answer script. That would be against the very concept for which revaluation is impermissible."

In view of the above said judgment, merely because petitioners were declared passed in the revaluation process, it cannot either be said that the initial process initiated pursuant to the orders of Vice-Chancellor is illegal or the same is subject to scrutiny by the Executive Council. Though it is argued by the learned Advocate-General appearing for the respondents that any interference with the decision of the Executive Council as approved by the Chancellor will result in restoration of illegal order of Vice-Chancellor and relied on the decision of the Supreme Court in **Gadde Venkateswara Rao v. Govt. of A.P. (4 supra),** but I have already discussed about the powers of the Vice-Chancellor and held that as the Principal executive and academic officer of the university having general supervision and control over the affairs of the University, it is open for the Vice Chancellor to consider representations and pass orders independently in deserving cases for reverification. Therefore, in view of the power under Section 12(2) of the Act, it cannot be said that interference with the impugned order will result in restoration of illegal order.

Even assuming that the Executive Council being in-charge of overall affairs of the University is the superior authority over all, but, when a decision is taken by the Vice-Chancellor in the capacity of Principal Executive Officer having general supervision and control over the affairs of the university, under sub-Section (2) of Section 12 of the Act, even if the said decision is to be annulled by the Executive Council, the Executive Council can do so only by recording valid reasons, which stand to legal scrutiny. In the instant cases, though initially, in the Executive Council Meeting held on 10-2-2007, it was resolved to verify the reasons for ordering reverification and also on the allegations of irregularities in the process of reverification, but, however, no enquiry appears to have been conducted by any authority

either by University or by governmental authority as requested by the Executive Council, but, surprisingly, on a reference made by the Vice-Chancellor, again the matter was discussed in its meeting held on 2-4-2007 and it was resolved to cancel the verification process, not on the ground of any irregularity, but merely by mentioning that if reverification is allowed, it will dilute the standards. The said reason is not a valid reason at all. Merely because reverification or revaluation is done, no inference can be drawn that in every case more marks than already awarded would be given irrespective of the answer written by the student and it will result in dilution of the standards of medical education. Exercise of power conferred on the authorities of the university, by the Vice-Chancellor under Section 12(3) of the Act comes into picture only in urgent situations. When it is pleaded by the learned Advocate-General that there is no power at all either to seek revaluation or to order revaluation, in such an event, the decision of the Vice-Chancellor is an independent one in exercise of powers under Section 12(2) of the Act and it cannot be said to be illegal or without any jurisdiction. Apart from the decision of the Executive Council being without any valid basis, the students were attending the classes of the second year right from 3.2.2007 and they have completed almost 3 months course of their second year. Therefore, viewed from this angle also, the communication of the University is not sustainable.

Though it is submitted by the learned Advocate-General appearing for the respondents that in the absence of any provision for reverification, the petitioner-students are not eligible to continue their study based on the results which were declared on the basis of reverification, but, however, it is to be noticed that while it is always open for the Vice-Chancellor and other Officers of the University to reject such a request on the ground that such a provision is not available, but, however, having considered such a request and after entire process is over, it is not open for the respondents to cancel the performance merely on the ground that there is no such provision.

Students may not have any right to ask for revaluation in absence of any specific provision and the law is well settled in this regard right from the year 1984 by the case in **Maharashtra S.B.C.S. & H.S. Education v. Paritosh**[6]**.** In the said judgment, the Honourable Supreme Court considered as to whether a student has right to demand inspection, verification and revaluation of answer books and held that in the absence of any provision in the academic regulations, students cannot seek for revaluation. Even the judgment in Writ Appeal No. 960 of 2006 (supra) relied on by the learned Advocate-General will not support the case of the respondents herein for the simple reason that this is a case where the University itself undertook revaluation process and declared the results based on the variation in the marks of such revaluation. The case where a candidate seeks revaluation in the absence of any provision either from the University or seeks directions from the Court in exercise of writ jurisdiction is different from the one where the University itself acceded to the request and ordered for reverification. In that view of the matter even the judgment of the Division Bench relied on by the learned Advocate-General will not support his case.

Coming to the other contention of the learned counsel for the petitioners that no notice is issued before the cancellation of the results of the reverification, in view of setting aside of the impugned order having regard to the peculiar facts and circumstances of this, the said aspect need not be gone into in this case.

For the foregoing reasons, I am of the opinion that as the reverification was done pursuant to the orders of the Vice-Chancellor in exercise of his power under sub-Section (2) of Section 12 of the Act, and in the absence of any enquiry with regard to the alleged irregularities in the process of reverification, it is not open for the Executive Council to cancel the results of reverification at this stage driving the petitioners herein to go back to their first year and write

examinations. Therefore, the order impugned herein is not sustainable and is liable to be set aside and is accordingly set aside.

It is clarified that this judgment is rendered in the peculiar facts and circumstances of this case and this shall not be treated as a precedent for any other case and the University shall not also entertain any further reverification of answer scripts of any other candidate of the said batch of students as the classes of second year have commenced long back.

The writ petitions are allowed. There shall be no order as to costs.

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1 -- 5--2007 **R.SUBHASH REDDY, J.**

VR

LR COPIES TO BE MARKED: YES/NO

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[1] (1996) 7 SCC 106

[2] 2006 JT 10

[3] AIR 1986 AP 275

[4] (1966) 2 SCR 172

[5] AIR 1989 SC 1582

[6] AIR 1984 SC 1543